

REMARKS

Claims 1-2, 4-15, and 17-21 are pending in the above-identified application with claims 1, 4-5, 11-12, and 21 standing ready for further action on the merits and remaining claims 2, 6-10, 13-15, and 17-20 being currently withdrawn from consideration. Claim 1 has been amended herein. Support for the recitations to claim 1 can be found in the present specification, *inter alia*, at page 6, line 14. No new matter has been added. Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Issues over the Prior Art

1) The Examiner has rejected claims 1, 11-12, and 21 under 35 U.S.C. § 102(a) as being anticipated by WO '285 (WO 98/42285).

2) The Examiner has rejected claim 4 under 35 U.S.C. § 103(a) as being unpatentable over WO '285.

3) The Examiner has also rejected claim 5 under 35 U.S.C. § 102(a) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over WO '285.

Applicants respectfully traverse. Reconsideration and withdrawal of these rejections are respectfully requested based on the following considerations.

Legal Standard for Determining Anticipation

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art.” *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001) “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Legal Standard for Determining Prima Facie Obviousness

MPEP 2141 sets forth the guidelines in determining obviousness. First, the Examiner has to take into account the factual inquiries set forth in *Graham v. John Deere*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), which has provided the controlling framework for an obviousness analysis. The four *Graham* factors are:

- (a) determining the scope and content of the prior art;
- (b) ascertaining the differences between the prior art and the claims in issue;
- (c) resolving the level of ordinary skill in the pertinent art; and
- (d) evaluating any evidence of secondary considerations.

Graham v. John Deere, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966).

Second, the Examiner has to provide some rationale for determining obviousness. MPEP 2143 sets forth some rationales that were established in the recent decision of *KSR International Co. v Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007). Exemplary rationales that may support a conclusion of obviousness include:

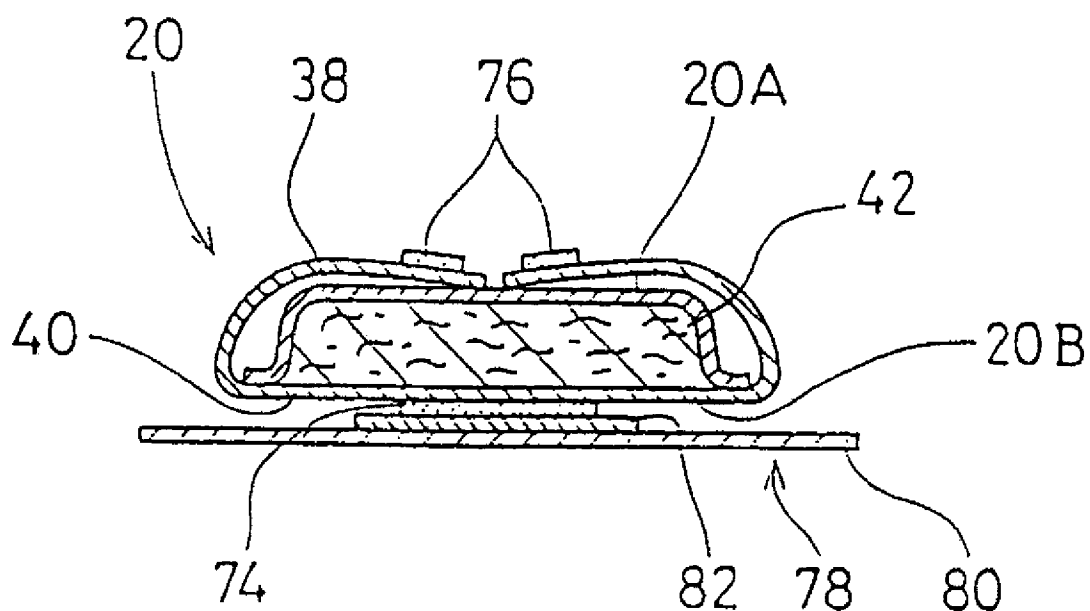
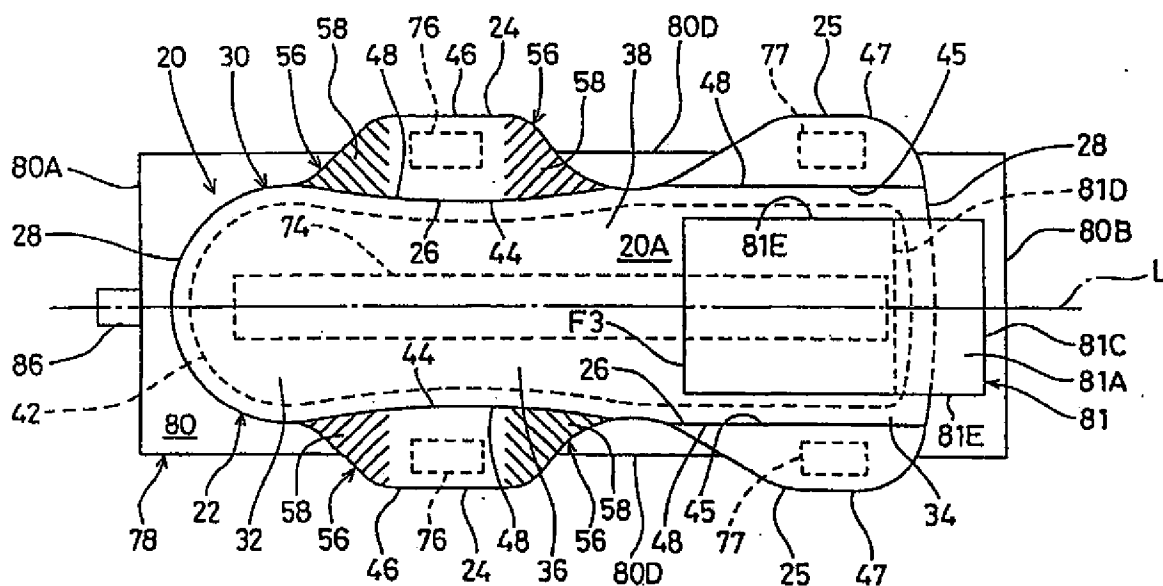
- (a) combining prior art elements according to known methods to yield predictable results;
- (b) simple substitution of one known element for another to obtain predictable results;
- (c) use of known technique to improve similar devices (methods, or products) in the same way;
- (d) applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (e) “obvious to try” – choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success
- (f) known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art;
- (g) some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

As the MPEP directs, all claim limitations must be considered in view of the cited prior art in order to establish a *prima facie* case of obviousness. *See* MPEP 2143.03.

Distinctions over the Cited Art

As is clearly seen from the reference numerals 45 and 48 of Figure 1 and the cross section of Figure 3 of WO ‘285 (shown below), the backsheet and topsheet are directly sealed to

thereby completely block the leakage of liquid flowing from the absorbent core to the side portions of the absorbent article in WO '285.



It is common practice in the art to make the backsheet liquid-impermeable and to constitute the topsheet so as to prevent the backflow of the absorbed liquid. Therefore, the structure of WO '285, absorbing liquid in the absorbent layer of the main body and blocking the absorbed liquid so as not to flow toward the front and rear flap portions, was not a technique peculiar to WO '285 but was common in the art at the time the invention of WO '285 was made. The rear flaps of WO '285 (second flaps) are made only of the backsheet, which is the same as the first flaps. From this structure, the idea of completely blocking the liquid diffusion from the absorbent core of the main body was ordinarily shared in the art at the time the invention of WO '285 was made, although it is not specifically described in the specification of WO '285.

In stark contrast, the present invention has drastically changed the conventional idea that liquid should be blocked within the main body. The present invention provides rear flaps (the left and right wing portions) which widely cover the wearer's buttocks to positively absorb liquid.

As recited in claim 1, the absorbent core arranged in the rear flaps covering the wearer's buttocks is a sheet-like material. A thick and stiffened absorbent core impairs the wearer's comfortable feel during use, but an absorbent core of a sheet-like material has less absorptive capacity and slow liquid diffusion. However, with the claimed structure of the rear wing portion and by embossing the absorbent sheet, the diffusion of the absorbed liquid is controlled, and efficient use of the whole area of the absorbent core is achieved.

With specific respect to Ahr '924 (US 4,321,924), the intermediate layer is made of a film having base openings and apex openings. Thus, the layer itself does not function as an

absorbent core. The present invention is not disclosed even if the film intermediate layer is applied to the rear flaps.

For all the reasons given above, the present invention is not anticipated by WO '285 since the reference does not teach or provide for each of the limitations recited in the pending claims.

To establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations must be disclosed by the prior art. As discussed above, WO '285 fails to disclose all the claim limitations of independent claim 1, and those claims dependent thereon. Therefore, a *prima facie* case of obviousness has not been established, and withdrawal of the outstanding rejection is respectfully requested.

For the reasons given above, WO '285 does not render the present invention obvious because WO '285 does not disclose at least one feature of the present invention and its effects. Furthermore, the cited references or the knowledge in the art provide no reason or rationale that would allow one of ordinary skill in the art to arrive at the present invention as claimed. Any contentions of the USPTO to the contrary must be reconsidered at present.

CONCLUSION

A full and complete response has been made to all issues as cited in the Office Action. Applicants have taken substantial steps in efforts to advance prosecution of the present application. Thus, Applicants respectfully request that a timely Notice of Allowance issue for the present case clearly indicating that each of claims 1, 4-5, 11-12, and 21 are allowed and patentable under the provisions of title 35 of the United States Code.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Chad M. Rink, Reg. No. 58,258 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 

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